

**State of California
California Regional Water Quality Control Board, Los Angeles Region**

RESOLUTION NO. R2007-XXX

November 01, 2007

**Amendment to the *Water Quality Control Plan for the Los Angeles Region*
to Incorporate a Total Maximum Daily Load for Bacteria in the
Harbor Beaches of Ventura County
(Kiddie Beach and Hobie Beach)**

WHEREAS, the California Regional Water Quality Control Board, Los Angeles Region, finds that:

1. The Federal Clean Water Act (CWA) requires the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) to establish water quality standards for each water body within its region. Water quality standards include beneficial uses, water quality objectives that are established at levels sufficient to protect those beneficial uses, and an antidegradation policy to prevent degrading waters. Water bodies that do not meet water quality standards are considered impaired.
2. CWA section 303(d)(1) requires each state to identify the waters within its boundaries that do not meet water quality standards. Those waters are placed on the state's "303(d) List" or "Impaired Waters List". For each listed water, the state is required to establish the Total Maximum Daily Load (TMDL) of each pollutant impairing the water quality standards in that waterbody. Both the identification of impaired waters and TMDLs established for those water shall be submitted to U.S. EPA for approval pursuant to CWA section 303(d)(2). For all waters that are not identified as impaired, the states are nevertheless required to create TMDLs pursuant to CWA section 303(d)(3).
3. The elements of a TMDL are described in 40 CFR 130.2 and 130.7 and section 303(d) of the CWA, as well as in U.S. EPA guidance documents (Report No. EPA/440/4-91/001). A TMDL is defined as the sum of the individual waste load allocations for point sources, load allocations for nonpoint sources and natural background (40 CFR 130.2). TMDLs shall be set at levels necessary to attain and maintain the applicable narrative and numeric water quality standards with seasonal variations and a margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality (40 CFR 130.7(c)(1)). 40 CFR 130.7 also dictates that TMDLs shall take into account critical conditions for stream flow, loading and water quality parameters. TMDLs typically include one or more numeric "targets", i.e., numerical translations of the existing water quality standards, which represent attainment of those standards, contemplating the TMDL elements described above.
4. Neither TMDLs nor their targets nor other components are water quality objectives, and thus their establishment does not implicate California Water Code

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- section 13241. Rather, under California Law, TMDLs are programs to implement existing standards (including objectives), and are thus established pursuant to California Water Code section 13242. Moreover, they do not create new bases for direct enforcement against dischargers apart from the existing water quality standards they translate. The targets merely establish the bases through which load allocations (LAs) and waste load allocations (WLAs) are calculated. LAs and WLAs are only enforced for a discharger's own discharges, and then only in the context of the discharger's relevant National Pollutant Discharge Elimination System (NPDES) permit (or other permit, waiver, or prohibition). NPDES permits shall contain effluent limits consistent with the assumptions and requirements of the WLAs (40 C.F.R. 122.44(d)(vii)(B)). The Regional Board will develop NPDES permit requirements through subsequent permit actions that will allow all interested persons, including but not limited to Municipal Separate Stormwater Sewer System permittees, to provide comments on how the LAs and WLAs should be translated into permit requirements.
5. Upon establishment of TMDLs by the State or U.S. EPA, the State is required to incorporate the TMDLs into the State Water Quality Management Plan (40 CFR 130.6(c)(1), 130.7). The Water Quality Control Plan for the Los Angeles Region (Basin Plan) and applicable statewide plans serve as the State Water Quality Management Plans governing the watersheds under the jurisdiction of the Regional Board. Attachment A to this resolution contains the Basin Planning language for this TMDL.
 6. Channel Islands Harbor is located on the Pacific Coast in the City of Oxnard, County of Ventura. Channel Islands Harbor is located just north of Port Hueneme Harbor in the City of Port Hueneme, County of Ventura. Kiddie Beach and Hobie Beach are located at the eastern end of the main entrance to the Channel Islands Harbor. The harbor is protected by one main breakwater in front of the main entrance. In addition, there are two small jetties located on north and south side of the main entrance. Kiddie Beach and Hobie Beach were originally designed as surge beaches to absorb the excess wave energy not dispersed by the breakwater.
 7. Channel Islands Harbor is part of the Regional Board's Miscellaneous Ventura County Water Management Area.
 8. The Regional Board's goal in establishing a TMDL for Kiddie Beach and Hobie Beach (referenced in the Staff Report of this TMDL as the Harbor Beaches of Ventura County) is to reduce the risk of illness associated with swimming in marine waters contaminated with high densities of indicator bacteria. Local and national epidemiological studies compel the conclusion that there is a causal relationship between adverse health effects, such as gastroenteritis, and recreational water quality, as measured by bacteria indicator densities.
 9. Regional Board Staff have prepared a detailed technical document that analyzes and describes the specific necessity and rationale for the development of this TMDL. The technical document entitled "Harbor Beaches of Ventura County (Kiddie Beach and Hobie Beach) Bacteria TMDL" is an integral part of this Regional Board action and was reviewed, considered, and accepted by the Regional Board before acting. Further, the technical document provides the

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- detailed factual basis and analysis supporting the problem statement, numeric targets (interpretation of the numeric water quality objective, used to calculate the load allocations), source analysis, linkage analysis, waste load allocations (for point sources), load allocation (for nonpoint sources), margin of safety, and seasonal variations and critical conditions of this TMDL.
10. The public has had reasonable opportunity to participate in review of the amendment to the Basin Plan. A draft of the TMDL for bacteria at the Harbor Beaches of Ventura County was released for public comment on June 26, 2007; a Notice of Hearing and Notice of Filing were published and circulated 45 days preceding Board action; the commenting period was extended an additional 47 days per stakeholder request, Regional Board staff responded to oral and written comments received from the public; and the Regional Board held a public hearing on November 01, 2007 to consider adoption of the TMDL.
 11. In amending the Basin Plan to establish this TMDL, the Regional Board considered the requirements set forth in Sections 13240 and 13242, and section 13269 of the California Water Code.
 12. The amendment is consistent with the State Antidegradation Policy (State Board Resolution No. 68-16), in that the changes to water quality objectives (i) consider maximum benefits to the people of the state, (ii) will not unreasonably affect present and anticipated beneficial use of waters, and (iii) will not result in water quality less than that prescribed in policies. Likewise, the amendment is consistent with the federal Antidegradation Policy (40 CFR 131.12).
 13. Pursuant to Public Resources Code section 21080.5, the Resources Agency has approved the Regional Water Boards' basin planning process as a "certified regulatory program" that adequately satisfies the California Environmental Quality Act (CEQA) (Public Resources Code, Section 21000 et seq.) requirements for preparing environmental documents (14 Cal. Code Regs. § 15251(g); 23 Cal. Code Regs. § 3782.). Regional Water Board Staff has prepared "substitute environmental documents" for this project that contains the required environmental documentation under the State Water Resources Control Board's (State Board) CEQA regulations (23 Cal. Code Regs. § 3777.). The substitute environmental documents include the TMDL staff report entitled "Harbor Beaches of Ventura County (Kiddie Beach and Hobie Beach) Bacteria Total Maximum Daily Load", the environmental checklist, the comments and responses to comments, the basin plan amendment language, and this resolution. The project itself is the establishment of a TMDL for bacteria in the Harbor Beaches of Ventura County. The Board exercises discretion in assigning waste load allocations and load allocations, determining the program of implementation, and setting various milestones in achieving the water quality standards. The CEQA checklist and other portions of the substitute environmental documents contain significant analysis and numerous findings related to impacts and mitigation measures.
 14. A CEQA Scoping hearing was conducted on January 10, 2007 at the Ventura Government Center, Hall of Administration Building, Multi-Purpose Room, 800 S. Victoria Avenue, Ventura, California 93009-1260. A notice of the CEQA Scoping hearing was sent to interested parties including cities and/or counties with

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- jurisdiction in or bordering the Ventura River and the Miscellaneous Ventura Coastal Water Management Area. This notice was also published in the Ventura County Star on December 20, 2006.
15. In preparing the substitute environmental documents, the Regional Board has considered the requirements of Public Resources Code section 21159 and California Code of Regulations, title 14, section 15187, and intends those documents to serve as a Tier 1 environmental review. This analysis is not intended to be an exhaustive analysis of every conceivable impact, but an analysis of the reasonably foreseeable consequences of the adoption of this regulation, from a programmatic perspective. Compliance obligations will be undertaken directly by public agencies that may have their own obligations under CEQA. Project level impacts may need to be considered in any subsequent environmental analysis performed by other public agencies, pursuant to Public Resources Code section 21159.2. To the extent applicable, this Tier 1 substitute environmental document may be used to satisfy subsequent CEQA obligations of those agencies.
 16. Consistent with the Regional Board's substantive obligations under CEQA, the substitute environmental documents do not engage in speculation or conjecture, and only consider the reasonably foreseeable environmental impacts, including those relating to the methods of compliance, reasonably foreseeable feasible mitigation measures to reduce those impacts, and the reasonably foreseeable alternative means of compliance, which would avoid or reduce the identified impacts.
 17. The proposed amendment could have a potentially significant adverse effect on the environment. However, there are feasible alternatives, feasible mitigation measures, or both, that if employed, would substantially lessen the potentially significant adverse impacts identified in the substitute environmental documents, however such alternatives or mitigation measures are within the responsibility and jurisdiction of other public agencies, and not the Regional Board. California Water Code section 13360 precludes the Regional Board from dictating the manner in which responsible agencies comply with any of the Regional Board's regulations or orders. When the agencies responsible for implementing this TMDL determine how they will proceed, the agencies responsible for those parts of the project can and should incorporate such alternatives and mitigation into any subsequent projects or project approvals. These feasible alternatives and mitigation measures are described in more detail in the substitute environmental documents (14 Cal. Code Regs. § 15091(a)(2).).
 18. From a program-level perspective, incorporation of the alternatives and mitigation measures outlined in the substitute environmental documents will foreseeably reduce impacts to less than significant levels.
 19. The substitute documents for this TMDL, and in particular the Environmental Checklist, identify broad mitigation approaches that should be considered at the project level.
 20. The regulatory action meets the "Necessity" standard of the Administrative Procedures Act, Government Code, Section 11353, Subdivision (b). As specified

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above, Federal law and regulations require that TMDLs be incorporated into the water quality management plan. The Regional Board's Basin Plan is the Regional Board's component of the water quality management plan, and the Basin Plan is how the Regional Board takes quasi-legislative, planning actions. Moreover, the TMDL is a program of implementation for existing water quality objectives, and is, therefore, appropriately a component of the Basin Plan under California Water Code section 13242. The necessity of developing a TMDL is established in the TMDL staff report, the section 303(d) list, and the data contained in the administrative record documenting the conditions related to bacteria in the Harbor Beaches of Ventura County.

21. The Basin Plan amendment incorporating a TMDL for bacteria for the Harbor Beaches of Ventura County shall be submitted for review and approval by the State Board, the State Office of Administrative Law (OAL), and the U.S. EPA. The Basin Plan amendment will become effective upon approval by OAL and U.S. EPA. Notice of Decision will be filed with the Resources Agency.
22. If during the State Board's approval process Regional Board Staff, the State Board, or OAL determines that minor, non-substantive modifications to the language of the amendment are needed for clarity or consistency, the Executive Officer should make such changes consistent with the Regional Board's intent in adopting this TMDL, and should inform the Board of any such changes.

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THEREFORE, be it resolved that pursuant to sections 13240 and 13242, and section 13269 of the California Water Code, the Regional Board hereby amends the Basin Plan as follows:

1. Pursuant to Sections 13240 and 13242, and section 13269 of the California Water Code, the Regional Board, after considering the entire record, including oral testimony at the hearing, hereby adopts the amendments to Chapter 7 of the Water Quality Control Plan for the Los Angeles Region, as set forth in Attachment A hereto, to incorporate the elements of the Bacteria TMDL for the Harbor Beaches of Ventura County.
2. The Regional Board hereby approves and adopts the CEQA substitute environmental documentation, including all findings contained therein, which was prepared in accordance with Public Resources Code section 21159 and California Code of Regulations, title 14, section 15187, and directs the Executive Officer to sign the environmental checklist.
3. The Executive Officer is directed to forward copies of the Basin Plan amendment to the State Board in accordance with the requirements of section 13245 of the California Water Code.
4. The Regional Board requests that the State Board approve the Basin Plan amendment in accordance with the requirements of sections 13245 and 13246 of the California Water Code and forward it to OAL and the U.S. EPA.
5. If during the State Board's approval process, Regional Board staff, the State Board or OAL determines that minor, non-substantive modifications to the language of the amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Board of any such changes.
6. The Executive Officer is authorized to sign a Certificate of Fee Exemption.

I, Tracy J. Egoscue, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, on November 1, 2007.

Tracy J. Egoscue
Executive Officer

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